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PUBLIC UTILITIES
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of

PUBLIC UTILITIES COMMISSION

DOCKET NO. 2008-0274

Instituting a Proceeding to Investigate
Implementing a Decoupling Mechanism for
Hawaiian Electric Company, Inc., Hawaii Electric
Light Company, Inc., and Maui Electric Company,
Limited

**HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT
COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S
MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE
BY HAWAII HOLDINGS, LLC, DOING BUSINESS AS
FIRST WIND HAWAII**

AND

CERTIFICATE OF SERVICE

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MAUI ELECTRIC COMPANY, LIMITED

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HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT
COMPANY, INC.¹ ("HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("MECO")¹
respectfully submit this Memorandum in Opposition to the Motion To Intervene By Hawaii
Holdings, LLC, Doing Business As First Wind Hawaii ("First Wind"), dated November 13, 2008
("Motion").²

First Wind should not be allowed to intervene as a full party in this docket, as: (1) First

¹ HECO, HELCO and MECO are collectively referred to herein as the "HECO Companies" or "Companies".

² The Motion was served upon HECO by mail on November 13, 2008. Hawaii Administrative Rules ("HAR") § 6-61-41(c) states: "An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion" HAR § 6-61-22 states: ". . . When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation" HAR § 6-61-21(e) states: "Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party by mail, two days shall be added to the prescribed period." Seven days from November 13, 2008, excluding Saturdays, Sundays and holidays, is Monday, November 24, 2008. Therefore, this Memorandum in Opposition to the Motion is timely filed.

Wind has not demonstrated that it has any expertise, knowledge or experience with decoupling and/or ratemaking issues that might assist in the development of a sound record; (2) First Wind's stated interest in "wind resources" is not reasonably pertinent to the revenue decoupling and/or ratemaking issues to be investigated in this docket; (3) First Wind has not demonstrated that its stated "interest" in this proceeding would not be adequately represented by the Consumer Advocate; and (4) First Wind's apparent focus on "the issues involved in feed-in tariffs" and other issues related to "wind energy projects" demonstrates that First Wind's intervention as a party in this docket is likely to unduly broaden the issues or delay this proceeding.

I. DISCUSSION

A. BACKGROUND

In its Order Initiating Proceeding, filed October 24, 2008 in Docket No. 2008-0274 ("Initiating Order"), the Commission opened this docket for the purpose of examining the implementation of "a decoupling mechanism for the HECO Companies that would modify the traditional model of ratemaking for the HECO Companies by separating the HECO Companies' revenues and profits from electricity sales." *Id.* at 9, para. 1.

The Initiating Order also recognized that decoupling is, in essence, a form of ratemaking: "Included in the [HCEI Agreement³] is a commitment by the HECO Companies to modify their traditional rate-making model by implementing a decoupling mechanism. Generally, decoupling is a regulatory tool designed to separate a utility's revenue from changes in energy sales." *Id.* at 2.

Further, the Initiating Order recognized the need to expeditiously develop a decoupling mechanism to facilitate the interim decision in HECO's 2009 test year rate case: "[T]he HECO

³ The October 20, 2008 *Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and Hawaiian Electric Companies* is referred to as the "HCEI Agreement".

Companies and the Consumer Advocate agreed that “[t]he revenues of the utility will be fully decoupled from sales/revenues beginning with the interim decision in the 2009 Hawaiian Electric Company Rate Case (most likely in the summer of 2009).” Id. at 4. To that end, the Commission indicated that “to expedite this process, the commission will direct the HECO Companies and the Consumer Advocate to submit to the commission a joint proposal on decoupling that addresses all of the factors identified in their Agreement within sixty days of the date of this Order.” Id. at 5.

B. STANDARD FOR INTERVENTION.

Motions to intervene are governed by the Rules of Practice and Procedure Before the Public Utilities Commission, Title 6, Chapter 61, HAR (the “Commission’s Rules of Practice and Procedure”), which pertain to intervention as a party as well as participation without intervention. First Wind has labeled its Motion as a “Motion to Intervene” filed pursuant to HAR § 6-61-55. Under HAR § 6-61-55(a), “A person may make an application to intervene and become a party by filing a timely written motion . . . stating the facts and reasons for the proposed intervention and the position and interest of the applicant.”

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission “is not a matter of right but is a matter resting within the sound discretion of the Commission.” In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. HAR § 6-61-55(d) specifically

states: "Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993).

In addition, HAR §§ 6-61-55(a) and (b) require a movant to "adequately state specific facts or reasons in support of its intervention." See Re Hawaiian Electric Company, Inc., Docket No. 00-0322, Order No. 18035 (September 20, 2000) ("Order 18035") at 3. "Conclusory" statements or allegations that "merely recite the various factors set forth in HAR § 6-61-55(b)" are inadequate for intervention as a party. See Order 18035 at 3.

Moreover, the Commission needs to "secure the just, speedy and inexpensive determination of every proceeding," which is the purpose of the Commission's Rules of Practice and Procedure as stated in HAR § 6-61-1. However, the "just, speedy and inexpensive determination" of a proceeding cannot be accomplished if the Commission admits every movant as a party.

C. FIRST WIND'S MOTION TO INTERVENE SHOULD BE DENIED.

Based on the standards set forth above, First Wind has not demonstrated that it should be permitted to intervene as a full party in this docket, and thus the relief requested in its Motion should be denied.

1. First Wind Has Not Demonstrated that its Intervention Will Assist in the Development of a Sound Record Regarding Revenue Decoupling.

HAR § 6-61-55(b)(6) requires that motions to intervene make reference to "[t]he extent to which the applicant's participation can assist in the development of a sound record[.]" However, First Wind's Motion does not indicate how First Wind could contribute to a discussion on developing and implementing a decoupling mechanism. For example, the Motion does not specifically identify any of First Wind's potential witnesses, or any experience with decoupling

and/or ratemaking issues that might assist in the development of a sound record. In addition, First Wind has not discussed or provided any examples of any substantive expertise, knowledge or experience that it may possess regarding decoupling, which as discussed above, involves severing the economic linkage between utility revenues and sales.

Instead, the Motion simply contends that:

First Wind anticipates that it can assist the Commission in its consideration and analysis of, and final actions with respect to, the issues involved in feed-in tariffs. First Wind fully anticipates that its intervention will aid in the development of a sound record, and does not expect its intervention to broaden the issues or otherwise delay the proceedings.

Motion at 6 (emphasis added).

First Wind's contention in this regard does not demonstrate that First Wind could assist in the development of a sound record in this docket, as "the issues involved in feed-in tariffs" are not reasonably pertinent to the Commission's investigation of decoupling. Decoupling is, in essence, a form of ratemaking targeted at severing the economic linkage between utility revenues and sales. Thus, decoupling relates to the recovery of costs for the provisioning of energy by utilities to their customers. Feed-in tariffs by contrast, are generally focused on rates paid to other parties by the utility for energy. Accordingly, the issues surrounding feed-in tariffs affect a different "side of the meter" than the issues surrounding revenue decoupling. Significantly, on October 24, 2008, the Commission initiated a separate proceeding for the specific purpose of investigating the implementation of feed-in tariffs. See Docket No. 2008-0273.

Aside from First Wind's argument that its contributions regarding feed-in tariffs would contribute to a discussion of revenue decoupling (which it would not), First Wind's "anticipat[ion] that its intervention will aid in the development of a sound record" is conclusory, unsupported and speculative, and therefore inadequate for intervention as a party. See Order

2. **First Wind Has Not Demonstrated an Interest Reasonably Pertinent to Revenue Decoupling.**

HAR § 6-61-55(b) requires that motions to intervene make various references to a movant's interest in the proceeding, including references to the: (1) "nature and extent of the applicant's property, financial, or other interest in the pending matter;"⁴ (2) "effect of the pending order as to the applicant's interest;"⁵ (3) "other means available whereby the applicant's interest may be protected;"⁶ (4) "extent to which the applicant's interest will not be represented by existing parties;"⁷ and (5) "extent to which the applicant's interest in the proceeding differs from that of the general public."⁸ Although the Motion contains general discussions of First Wind's interests in "wind resources," the Motion does not demonstrate that First Wind has an interest reasonably pertinent to revenue decoupling.

As reiterated throughout its Motion, First Wind's "interest" in this proceeding is predicated on First Wind's participation "in the development of wind energy power generation facilities using Hawaii's indigenous renewable wind resources"⁹ However, First Wind's stated interest in "wind resources" is not reasonably pertinent to the decoupling and ratemaking issues to be addressed in this proceeding.

As noted above, decoupling is targeted at severing the economic linkage between utility

⁴ HAR § 6-61-55(b)(2).

⁵ HAR § 6-61-55(b)(3).

⁶ HAR § 6-61-55(b)(4).

⁷ HAR § 6-61-55(b)(5).

⁸ HAR § 6-61-55(b)(8).

⁹ Motion at 3; see also Motion at 4 ("As a major independent developer and supplier of electric energy from renewable wind energy resources . . . First Wind has a direct and substantial interest in . . . the decoupling mechanism"); Motion at 5 ("First Wind has substantial and unique interests in the continuing development of a major renewable energy resource in Hawaii"); Motion at 6 ("First Wind's interests in this proceeding differ from the of the general public because . . . First Wind is the developer of the renewable wind energy resources on each of the Islands of Maui, Oahu and Molokai"); Motion at 7 ("First Wind has a direct and substantial interest [in sic] the further development and use of wind energy resources").

revenues and sales, and thus relates to the recovery of costs for the provisioning of energy. The development of “wind resources,” by contrast, relates to the procurement of energy by utilities, which affects a different “side of the meter” than the issues surrounding revenue decoupling.

First Wind nonetheless contends that it is interested in “the implications that such a decoupling mechanism could have on the arrangements, including transmission charges and related costs, for the interisland submarine transmission cable through which First Wind will deliver its electric energy generated on Molokai to HECO on the island of Oahu.” Motion at 5. Like First Wind’s general interest in “wind resources,” the issues concerning an “interisland submarine transmission cable” do not relate to the procurement of energy by utilities, and thus are not reasonably pertinent to decoupling or ratemaking.

3. **First Wind Has Not Demonstrated that its “Interest” in this Proceeding would Not be Adequately Represented by the Consumer Advocate.**

As stated above, HAR § 6-61-55(b)(5) requires that motions to intervene refer to “[t]he extent to which the applicant’s interests will not be represented by the existing parties.” With respect to this requirement, the Motion claims that “there are no other parties to this proceeding, and no other means available . . . by which First Wind’s interest in this [sic] proceedings will or can be adequately and fully protected,” and that “[t]here are no other parties to this proceeding [that sic] can adequately and fully represent the interests of First Wind regarding the issues to be identified and considered in this proceeding.” Motion at 6. First Wind’s assertions in this regard are not persuasive.

Although the Initiating Order specifically named the Consumer Advocate as a party “to this investigative docket,”¹⁰ the Motion does not contain any explanation as to how or why the

¹⁰ Initiating Order at 9.

Consumer Advocate might not be able to represent First Wind's "interest" with respect to decoupling or ratemaking issues. Indeed, the Consumer Advocate is "statutorily required to represent, protect, and advance the interest of all consumers." HRS § 269-51 (emphasis added). Thus, the Consumer Advocate is required to ensure that the decoupling mechanism being investigated in this docket treats all consumers (including First Wind) fairly. Given the Consumer Advocate's resources, including the expertise, knowledge and experience it has gained as a statutorily-named party to countless utility ratemaking proceedings, this is a task to which the Consumer Advocate is well-suited.

In light of the Consumer Advocate's presence in this docket, First Wind's conclusory contention that there are "no other parties to this proceeding" that can adequately represent its interests is not sufficient to warrant First Wind's intervention as a party to this proceeding.

4. **First Wind's Intervention Would Likely Broaden the Issues in this Investigation of Revenue Decoupling.**

HAR § 6-61-55(b)(7) requires that motions to intervene make reference to "[t]he extent to which the applicant's participation will broaden the issues or delay the proceeding." With respect to this requirement, First Wind alleges that it "does not expect its intervention to broaden the issues or otherwise delay the proceedings." Motion at 6. However, given: (1) First Wind's apparent intent to explore "the issues involved in feed-in tariffs" in this docket; and (2) that the purported "interests" described in First Wind's Motion are not reasonably pertinent to the revenue decoupling and/or ratemaking issues to be investigated in this proceeding, First Wind's "expectation" in this regard is not convincing.

As discussed above, "the issues involved in feed-in tariffs" are not pertinent to the development and implementation of a revenue decoupling mechanism for the HECO Companies. In fact, the Commission has opened an entirely separate docket in which to investigate the

implementation of feed-in tariffs.¹¹

In addition, any issues concerning First Wind's current and future "wind energy projects," including "an interisland submarine transmission cable" likewise lie beyond the scope of this proceeding. As also discussed above, First Wind's stated interest in "wind resources" is not reasonably pertinent to the decoupling and ratemaking issues to be addressed in this proceeding.

Moreover, First Wind does not explain how "transmission charges and related costs, for the interisland submarine transmission cable" are pertinent to ratemaking or severing the economic linkage between utility revenues and sales. For example, First Wind does not explain how decoupling would impact the Companies' power purchase agreements, or the cost of the Companies' purchased power.

Accordingly, permitting First Wind to intervene as a party and raise matters such as the "interisland submarine transmission cable" between Oahu and Molokai could only broaden the issues and delay this proceeding. This should be of particular concern in this instance, given the expeditious procedural schedule set by the Commission in this docket (e.g., the 60-day deadline for a joint proposal on decoupling; and the Commission's goal of issuing a decision approximately in the summer of 2009).¹²

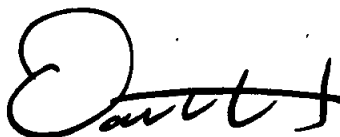
¹¹ See Order Initiating Investigation, filed October 24, 2008 in Docket No. 2008-0273.

¹² Notably, at least eight motions to intervene have been filed to date in this docket by parties including: Life of the Land; Haiku; Blue Planet Foundation; Hawaii Holdings, LLC; Hawaii Renewable Energy Alliance; the State of Hawaii Department of Business, Economic Development, and Tourism; Hawaii Solar Energy Alliance; and Tawhiri Power LLC.

II. CONCLUSION

Based on the foregoing, the HECO Companies respectfully request that First Wind's Motion to Intervene be denied.

DATED: Honolulu, Hawaii, November 24, 2008.



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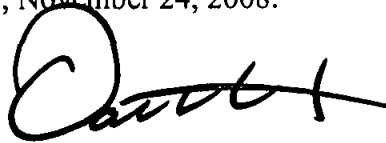
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE BY HAWAII HOLDINGS, LLC, DOING BUSINESS AS FIRST WIND HAWAII, together with this CERTIFICATE OF SERVICE, as indicated below by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

Hand Delivery	U.S. Mail	
X		Catherine Awakuni, Executive Director Department of Commerce and Consumer Affairs Division of Consumer Advocacy 335 Merchant Street, Room 326 Honolulu, Hawaii 96813
	X	Randall J. Hee, P.E. President and CEO Kauai Island Utility Cooperative 4463 Pahe'e Street, Ste. 1 Lihue, HI 96766-2000
	X	Timothy Blume Michael Yamane Kauai Island Utility Cooperative 4463 Pahe'e Street, Ste. 1 Lihue, HI 96766
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X		Gerald A. Sumida, Esq. Tim Lui-Kwan, Esq. Nathan C. Nelson, Esq. ASB Tower, Suite 2200 1001 Bishop Street Honolulu, HI 96813

DATED: Honolulu, Hawaii, November 24, 2008.



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